IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1273 of 2001
Old No. 827 of 1987

CRIMINAL SIDE:

1. Jwala Singh S/o Gulab Singh
2. Ram Singh S/o Jwala Singh
3. Gurdeep Singh S/o Jwala Singh……....Applicants/Appellants

Versus

State of Uttaranchal …….. Respondent

Mr. Dharamveer / I.S. Mehra, learned counsel for the appellants.
Mr. D.K. Sharma, learned Govt. Advocate for the State.

Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

(Delivered by Hon'ble Tandon, J.)

Heard Mr. Dharam Veer and Mr. I.S. Mehra, learned counsel for the appellants and Mr. D.K. Sharma, learned Government Advocate for the respondent-State.

The present criminal appeal has been filed by the appellants against the judgment and order of Ist Additional Sessions Judge, Nainital dated 19.03.1987 in S.T. No. 2 of 1985, convicting and sentencing the appellants under Section 302 read with Section 34 IPC to undergo rigorous imprisonment for life and further all the accused persons are sentenced to pay a fine of Rs.5,000/- each failing which the appellants have to undergo another one year simple imprisonment.

Case of the Prosecution:

Brief facts giving rise to the present appeal are that Narendra Singh, complainant lodged an oral report with the Police Station Khatima on 03.10.1984 at 18.40 hours regarding the incident. On the basis of oral information, F.I.R. (Ex. Ka-2) of this case was scribed. According to complainant, Narendra

Singh he is a resident of Pratappur No. 7. The demarcating line of one of his filed lies with the field of Jwala Singh who is also resident of his village. Nearly two months before this occurrence, Jwala Singh occupied nearly half bigha land belonging to the complainant Narendra Singh. On this, he took the matter before the Panchayat. In the Panchayat it was decided the Jwala Singh shall vacate the land forcefully occupied by him. Accused applicant Jwala Singh agreed with the decision of the Panchayat. On 26th September in the morning complainant was harvesting his paddy crop. Jwala Singh and his sons Gurdeep Singh and Ram Singh arrived at the said field armed with lathi, Kassi and gun. They started cutting the boundary line i.e. mend of the filed of complainant. On refraining, the accused appellants threatened complainant of the dire consequences. The accused appellants also intimidated the complainant and said to surrender the field in their favour otherwise he will be murdered. The accused appellants cut the mend of the said field and forcefully occupied a major portion of the said field. This incident was witnessed by Jarnail Singh and Sardul Singh. These witnesses intervened and persuaded the accused appellants to return. On 27th September, the complainant reported the matter to the Sub Divisional Magistrate, Khatima regarding the incident on which a Sub Inspector of Police came to the village of the complainant for enquiry. The accused appellants became furious on the enquiry made by the Sub Inspector and threatened the complainant for the dire consequences. On this the complainant reported the matter to the Gaon Sabhapati, Sri Charan Singh and a Panchayat was convened on 30th September in the morning at 8.00 A.M., but accused appellants did not turn up in that Panchayat. On the same day at about 8.00 P.M. in the night the brother of complainant Balvinder Singh alias Raju went to the village shop for purchasing few things and did not return. A vigorous search was made by the family members of the missing person Balvinder, but no trace of him was found. The complainant also made an enquiry regarding the whereabouts of

Jwala Singh and his sons and it was noticed that Ram Singh and Gurdeep Singh are absconding. On 03.10.1984 at about 4.00 P.M., one Phumman Singh of the same village informed the complainant that some foul smell is coming out of his paddy field. On this information, the family members of complainant, complainant himself along with several villagers rushed to the spot and saw the dead body of Balvinder Singh lying in the field. There were cut marks on the neck of the deceased and his hands and legs were found tied. On hearing this news the whole village arrived at the scene. An enquiry was made regarding the whereabouts of Jwala Singh and it was found that Jwala Singh too has absconded on hearing the news of recovery of dead body of Balvinder Singh. The complainant had full doubt that the accused appellants were involved in the murder of his brother, Balvinder Singh.

On 05.10.1984 postmortem of Balvinder Singh was made in Civil Hospital, Pilibhit. Postmortem report is marked as Ex. Ka-1. During the course of postmortem examination, the following anti mortem injuries were found on the dead body:

> Incised cut wound through and through at the level of 4th cervical vertebra from the middle of body.
>
> The back part of next intacted to the body with the skin of 6 cm in size from back. Wind pipe is also found cut at the same level.
>
> Rest muscles and skin all around except back eaten up by maggost.
>
> Effusion of blood pigment is seen in cortex and medulla of the bone.

The prosecution examined P.W 1 Dr. M.L. Sharma, Medical Officer, Civil Hospital, Pilibhit, P.W. 2 Narendra Singh, P.W. 3 Pal Singh, P.W. 4 Jarnail Singh, P.W. 5 Sardul Singh, P.W. 6 Darshan Singh, P.W. 7 Charan Singh and P.W. 8 Kartar Singh.

The statements of accused appellants were recorded under Section 313 Cr. P.C. and argument were heard.

FINDINGS

Learned counsel for the accused appellants has argued the following points:-

1. The prosecution has utterly failed to establish the identity of the dead body. P.W. 1, Dr. M.L. Sharma has clearly stated in his deposition that body which was brought for the postmortem examination, was unidentifiable.
2. Secondly, none of the witnesses examined by the prosecution is able to depose anything with regard to the identity of the body which was brought for postmortem.
3. Thirdly, the prosecution was not able to prove the real motive for the killing of Balvinder Singh by the accused appellants. No paper regarding the ownership of the disputed field is filed and further no papers could be filed by the prosecution regarding various reports made by the complainant to the authorities. Therefore, having failed to prove the motive to kill Balvinder Singh, the conviction cannot be made against the accused appellants.

The learned defence counsel has also pointed out that no reliance can be made under Section 27 of the Evidence Act and the prosecution has failed to establish the guilt of the accused. Present case is based of circumstantial evidences and no direct evidence is available regarding the fact so to who had seen the accused person committing the offence charged against them.

The learned Sessions judge has convicted the accused appellants on the circumstances threefold. The same are quoted hereinbelow:

The first circumstance as pointed out by the learned Sessions Judge is with regard to the enmity between the accused persons and the deceased and his family.

The second circumstances as pointed out by the learned Sessions Judge is the absconding behaviour of the accused persons from the scene after the deceased Balvinder Singh was murdered.

The third circumstance is regarding the testimony of P.W. 3 Pal Singh who has last seen the deceased Balvinder Singh along with the accused persons on the night of 30.09.1984 at about 8.30 P.M.

We have perused the record and from the evidence on record we have to examine the chain of circumstances for the above circumstances pointed out by the Sessions Judge in order to convict the appellants.

So far as the evidence of P.W. 1, Dr. M.L. Sharma is concerned he has pointed out that at the time of postmortem the body was not identifiable. His statement is quoted below:

"पोस्टमार्टम के समय Body मेरे विचार identifiable नही था।"

The prosecution has also relied upon the statement of P.W. 2, Narendra Singh who is elder brother of deceased Balvinder Singh. His evidence is also doubtful as he has stated that his brother was missing on 3rd and later on he has stated that he did not remember when he was missing. His Statement is quoted below:

> "भाई गायब होने की तारीख लिखाई थी। मेरा भाई 3 तारीख को गायब हुआ। तारीख 30 है या 3 मुझे याद नही है।"

The witness has also failed to point out any enmity of the accused persons with Balvinder Singh, the deceased in order to prove the motive to implicate the accused appellants.

The statement of P.W. 3, Pal Singh is also doubtful, as no enmity has been pointed out so as to prove the motive. Further he has deposed that with regard to missing of Balvinder Singh no intimation was given as will appear from the following statement made by him:

"चरन सिंह सिद्धा नगलिया का रहने वाला है। जब राजू गायब हुआ तो दूसरे दिन राजू का भाई व और गांव वाले तलाश में आये थे। उस दिन इन तलाश करने वालों से कोई बातचीज नही हुई। चरन सिंह उस समय उनके साथ नही था। जब लाश मिल गई तब उसके बाद मैने पहिली मर्तबा गांव वालों से यह कहा था कि राजू मृतक मुल्जिमान के साथ खडा था। उसके दस–पन्द्रह दिन बाद जब पुलिस वाले मुझसे पूछने आये तब मैने उनको अपने गांव में बताया कि मैने राजू को मुल्जिमान के साथ खडा देखा था।"

हम लोग उस दिन लेबर तलाश करने चाय पीने के बाद सुबह ही चल दिये थे हमारे गांव से मझोला करीब 12–13 मील है और हमारे गांव से मझोला पहुचने में साईकिलों से दो ढाई घन्टा लग गया। उस दिन मझोला में लेबर तलाश करने में ढाई तीन घन्टा लगा और जब लेबर नही मिली तो उसी रास्ते से सीधे गांव लौट आये। उसके दो–तीन दिन बाद फिर बहेडी जाकर हम लेबर लाये। जिस दिन हमने राजू को मुल्जिमान के साथ देखा तो वह कोट पैन्ट औ पगडी पहने हुये था।"

Reliance has also been placed on the evidence of Jarnail Singh, Sardul Singh, Darshan Singh and Charan Singh. Jarnail singh, P.W. 4 has also stated in his statement that the land belongs to Narendra Singh. The same is quoted below:

"जिस खेत की मेढ़ काटी जा रही थी उसके डेढ दो फर्लाग की दूरी पर लाश मिली थी। वह खेत भी नरेन्द्र सिंह वादी का ही है। जिस तरह से मैने चौहदी बताई है वह सही है लेकिन यह खेत कागजात माल में किसके नाम पर है मै नही बता सकता। जिस खेत की मेढ़ काटी जा रही थी उसमें आधे में चरी थी और आधे में धान था।"

Nothing material has been pointed out so as to prove the enmity between the accused appellants and the deceased. So far as P.W. 5 Sardul Singh is concerned he could not point out the enmity with deceased Balvinder Singh. His statement is quoted below:

"मौके पर जरनैल मुझसे पहले गये थे। इस झगडे के चौथे दिन बलवेन्दर की लाश नरेन्द्र सिह के धान के खेत में पडी मिली, जिस खेत की मेढ काटी जा रही थी उसके उत्तर में नरेन्द्र सिंह का खेत, दक्खिन में ज्वाला सिंह का खेत, पूरब में सडक तथा पाश्चिम में रामभरोसे और एक हरिजन का खेत है। मौके पर मै और जरनैल सिंह करीब एक घन्टा रहे थे।"

So far as P.W. 6 Darshan Singh is concerned he also failed to point out that Balvinder Singh is missing. On his cross examination with the State Counsel he stated as under:

> "बलविन्दर जिसकी हत्या हुई वह भी कम्बोज सिख था। मुल्जिमान ने ही मुझे बताया था कि बलविन्दर गायब है। लाश मिलने के तीसरे चौथे दिन बाद मै दरोगा जी को बताने गया। मुझे पता नही कि जिस दिन मुल्जिमान मेरे पास आये उस दिन लाश मिल गई थी या नही।"

So far the statement of P.W. 7 Charan Singh is concerned, it is also to be noted that this witness was an accused in a murder case and as such evidence of such person cannot be easily relied upon. Noting material has come out from his Statement. Therefore, no reliance can be placed on his statement.

So far as second circumstance is concerned with regard to absconding nothing has been proved.

So far as third circumstance regarding the testimony of P.W. 3 Pal Singh in concerned it is important to note that P.W. 3 had stated that he had seen the deceased along with accused persons only after 10-15 days when the police itself enquired about it from him. He had also stated that when he last saw deceased Raju with the accused appellants, Raju was wearing coat pant and turban at that time which was contrary to the finding of his belongings recovered at the time when his body was found lying in the paddy field. Therefore, his statement also appears to be unreliable.

In case of C. Chenga Reddy Vs. State of A.P. reported in (1996) 10 SCC pp. 193, para 21, it has been held as under:

> *"In a case based on circumstantial evidence the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should*

be no gap in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

In the case of Ram Prasad Vs State of U.P. and another reported in 2002 (45) ACC 1204, the Hon'ble Court has referred the case of Ashok Kumar Chatterjee Vs State of Madhya Pradesh; JT 1989 (3) 451 as under:

"……This Court upon consideration of a long catena of decisions, held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

1) *the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established:*
2) *those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
3) *the circumstances, taken cumulatively should from a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
4) *the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

In Hanumant Govind Nargundkar and another Vs State of Madhya Pradesh; AIR 1952 SC 343, the Court has observed as under:

"Ii is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in first instance be fully established, and all the facts so

established should be consistent only with the hypotheses of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

These Principles were needed to be restated even as late as in the decision reported in Sudama Pandey and others Vs State of Bihar; 2002 (44) ACC 329 (SC) and Subhash Chand Vs State of Rajasthan; 2001 (43) ACC 1054 (SC).

Realities of truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touch stone of the dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as

well as quality and credibility of the evidence brought on record."

From a perusal of the aforesaid material on the record, we are satisfied that the chain of circumstances are not satisfactory in order to form a complete chain against the accused appellants as the important links are missing in between and as such the chain of circumstances is totally incomplete. Neither the motive to implicate the accused appellants for causing the death of the deceased Raju nor any enmity of the accused appellants with the deceased have been proved from the evidence and material available on record. Further, we are of the view that the evidence of Dr. M.L. Sharma P.W. 1 and Pal Singh P.W. 3 are not in conformity with the prosecution case and as such the evidence falls short of proving the accused appellants to be guilty. Furthermore, the circumstances taken cumulatively are not found forming any complete chain so as to prove the guilt of the accused appellants.

Accordingly, we pass the following order:

ORDER

The appeal is allowed.

The accused appellants are, hereby, acquitted of the charges leveled against them and they be set at liberty provided they are not wanted in any other case.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dated: 27th May, 2004.
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